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May 11, 2018

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, Filing Room  
Harrisburg, PA 17120

RE: Implementation of Act 40 of 2017; Docket No. M-2017-2631527; **PETITION OF COMMUNITY ENERGY, INC. FOR CLARIFICATION AND/OR RECONSIDERATION OF THE COMMISSION’S MAY 3, 2018 IMPLEMENTATION ORDER**

Dear Secretary Chiavetta:

Enclosed for electronic filing with the Commission is the Petition of Community Energy, Inc. for Clarification and/or Reconsideration of the Commission’s May 3, 2018 Implementation Order in the above-captioned proceeding. Copies of this Petition have been served in accordance with the attached Certificate of Service.

Thank you for your attention to this matter. If you have any questions related to this filing, please do not hesitate to contact my office.

Very truly yours,

Todd S. Stewart  
*Counsel for Community Energy, Inc.*

TSS/jld  
Enclosure

cc: Law Bureau, Kriss Brown (via email – [kribrown@pa.gov](mailto:kribrown@pa.gov))  
Bureau of Technical Utility Services, Darren Gill (via email – [dgill@pa.gov](mailto:dgill@pa.gov))  
Per Certificate of Service

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**VIA FIRST CLASS MAIL**

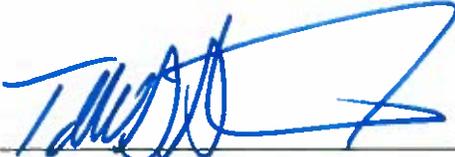
Pennsylvania Public Utility Commission  
Bureau of Investigation & Enforcement  
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Harrisburg, PA 17101

DATED: May 11, 2018

  
\_\_\_\_\_  
Todd S. Stewart

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Act 40 of 2017

:  
: Docket No. M-2017-2631527  
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**PETITION OF COMMUNITY ENERGY, INC.  
AND COMMUNITY ENERGY SOLAR, LLC  
FOR CLARIFICATION AND/OR RECONSIDERATION  
OF THE COMMISSION'S MAY 3, 2018  
IMPLEMENTATION ORDER**

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NOW COMES, Community Energy, Inc., and Community Energy Solar, LLC. (collectively "CE"), pursuant to 52 Pa. Code § 5.572(a), and hereby Petition the Pennsylvania Public Utility Commission ("Commission") and request that the Commission Clarify, or Reconsider its Order entered May 3, 2018 ("Order") in the above captioned matter.

In its Order, the Commission addressed various provisions of the statute that could be considered vague or simply where ambiguities of interpretation could impede fair and consistent implementation. One such section is at the heart of CE's request, 72 P.S. § 2804(2). Section 2804(2) provides:

Nothing under this section or section 4 of the "Alternative Energy Portfolio Standards Act" shall affect any of the following: (i) A certification originating within the geographical boundaries of this Commonwealth granted prior to the effective date of this section of a solar photovoltaic energy generator as a qualifying alternative energy source eligible to meet the solar photovoltaic share of this Commonwealth's alternative energy portfolio compliance requirements under the "Alternative Energy Portfolio Standards Act." (ii) Certification of a solar photovoltaic system with a binding written contract for the sale and purchase of alternative energy credits derived from solar photovoltaic energy sources entered into prior to the effective date of this section.

Because of its position in the market, the Commission's interpretation of this provision creates significant uncertainty regarding the status of the Alternative Energy Credits ("AEC") that both CE entities control. To that end, and as discussed below, CE respectfully asks that the Commission clarify and/or Reconsider its Order to remove the uncertainty and affirm that all contracts with EDCs and EGSs are grandfathered such that all parties holding contracts entered into prior to October 30, 2017, and within the chain of custody of the AECs supplying those contracts, are also grandfathered.

1. Both CE entities are developers of solar energy projects in and around Pennsylvania and is headquartered in Radnor, PA. Affiliates of the CE entities have been the developers of certain solar PV installations in states outside of Pennsylvania, which were certified as AEPS Tier I Solar Photovoltaic AECs prior to October 30, 2017, but which it no longer owns, but for which it retains the rights to the AECs. The CE entities have long term contracts with Pennsylvania EDCs and EGSs pursuant to which it sells those AECs to them. The contracts existed and have been effective prior to October 30, 2017.

2. In its Order, the Commission interpreted Section 2804(2)(ii) to mean:

The interpretation of Section 2804(2)(ii) of the Adm. Code, 71 P.S. § 714(2)(ii) is as follows: Section 2804(2)(ii) – we interpret this section to only permit out-of-state facilities that are (a) already certified as AEPS Tier I Solar Photovoltaic and that (b) have entered into a contract with a Pennsylvania EDC or EGS serving Pennsylvania customers, for the sale of solar credits, to maintain certification until the expiration of the contract. We further wish to clarify that, consistent with the comments provided by ET, this maintained certification should only be applicable to the amount of credits contractually committed to by an out-of-state certified facility to an EDC or EGS.<sup>1</sup>

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<sup>1</sup> Order at p. 8-9.

3. The uncertainty arises because the CE entities own the rights to the credits but their affiliates no longer own the facilities that generate the credits. Stated differently, Because the CE entities stand in the chain of ownership of the credits, it is unclear whether CE's interest in the credits and the underlying certification of facilities that generate its AECs can be preserved by the EDC or EGS filing a Petition to grandfather these credits. CE suggests that the Commission should clarify that all parties in the contractual chain from producer to the EDC and EGSs acting in good faith within the boundaries of existing law should not have contracts nullified by a change in law. These parties owning the AECs in the contractual chain of custody should be eligible to grandfather the AECs by a single Petition, so long as the statutory criteria are otherwise met. Stated differently, just because there are more parties in the contractual chain, other than the generator and the end user, should not disqualify the AECs under contract from a project from eligibility for grandfathering. Otherwise it is possible that CE may have a valid claim for grandfathering that would be destroyed only because it has an extra party in the chain of ownership of the AECs.

4. In its Order, the Commission did not address the situation, such as CE's, where there might be more than one party in the chain from production to retirement of the AECs. CE is not aware if there may be other entities similarly situated, but avers, that at least in its situation, the Commission's failure to do so, creates uncertainty as to its ability to grandfather the contracts for which it is entitled to the AECs. Accordingly, CE believes that it is appropriate for the Commission to clarify its Order to address this situation. Alternatively, to the extent the Commission believes that it has considered this particular situation and either chosen to not address it, or believes that it implicitly has rejected CE's position, CE requests that the Commission Reconsider its Order and revise it, based upon the representations herein.

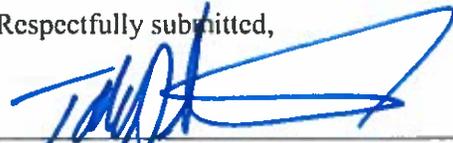
5. The Commission's standard for granting clarification/reconsideration is set out in the case of *Phillip Duick, et al. v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (1982) and provides:

A petition for Reconsideration under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the court in the *Pennsylvania Railroad Company* case, wherein it was said that '[p]arties . . . cannot be permitted by a second motion to review and Reconsider, to raise the same questions which were specifically considered and decided against them . . . .' What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on the matter or issue was either unwise or in error.<sup>2</sup>

CE's request here meets the standard because the Commission's Order appears to have overlooked and/or not considered the situation discussed herein. Because time is of the essence, Petitions for Grandfathering are due very soon, CE requests that the Commission review and revise its Order at the earliest possible date.

WHEREFORE, Community Energy respectfully requests that the Commission clarify or reconsider its Order in the above captioned matter consistent with the discussion herein and that in its deliberation it consider the short time left for Petitions for grandfathering.

Respectfully submitted,



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*Counsel for Community Energy Inc.*

DATED: May 11, 2018

<sup>2</sup> *Phillip Duick, et al. v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (1982) at 559.

## VERIFICATION

I, Jay Carlis, certify that I am Executive Vice President, Origination for Community Energy Solar, LLC, and that in this capacity I am authorized to, and do make this Verification on their behalf, that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief, and that Community Energy Solar, LLC, expects to be able to prove the same at any hearing that may be held in this matter. I understand that false statements made therein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authorities.



*Jay Carlis, Executive Vice President, Origination*

DATED: May 11, 2018

## VERIFICATION

I, Jay Carlis, certify that I am Vice President for Community Energy, Inc., and that in this capacity I am authorized to, and do make this Verification on their behalf, that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief, and that Community Energy, Inc., expects to be able to prove the same at any hearing that may be held in this matter. I understand that false statements made therein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authorities.



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*Jay Carlis, Vice President*

DATED: May 11, 2018